

Supplemental Letter of Findings: 04-20160453
Sales/Use Tax
For Tax Year 2014

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the conveniences of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual could not provide sufficient documentation to show that he was not required to register his aircraft in Indiana.

ISSUE

I. Sales/Use Tax--Aircraft.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-6-6.5-2; IC § 6-6-6.5-1; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the imposition of sales tax on an aircraft.

STATEMENT OF FACTS

Taxpayer is an individual. In 2015, Taxpayer bought a plane and registered it in Ohio. In 2015, the Indiana Department of Revenue ("Department") sent a letter to Taxpayer, which stated that as the owner of an aircraft Taxpayer was required to register the aircraft with the State of Indiana. After the Department was informed by an Indiana hanger [*sic, hangar*] that Taxpayer's aircraft was hangered [*sic, hangared*] in Indiana, the Department issued a proposed assessment of use tax, penalty, interest, and fees regarding the aircraft. Taxpayer protested, and an administrative telephone hearing was conducted. This Letter of Findings results. Further facts will be supplied as required below.

I. Sales/Use Tax--Aircraft.

DISCUSSION

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to an agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana requires the payment of a registration fee for aircraft held in Indiana for 60 days. Indiana also requires use tax on tangible personal property that is used, stored, or consumed in Indiana. Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to

the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2, which states:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.
- (b) The use tax is also imposed on the storage, use or consumption of a vehicle, an aircraft, or a water craft, if the [items]:
 - (1) is acquired in a transaction that is an isolated or occasional sales; and
 - (2) is required to be titled, license, or registered by this state for use in Indiana.

The relevant aviation statute in this case, IC § 6-6-6.5-2, states:

- (b) Except as otherwise provided in this chapter, any nonresident who bases an aircraft in this state for more than sixty (60) days shall register the aircraft with the department under this chapter not later than sixty (60) days after establishing a base in Indiana.

The Indiana statute defines "base" as:

"Base" means the location or place where the aircraft is normally hangered [*sic, hangared*], tied down, housed, parked, or kept, when not in use. IC § 6-6-6.5-1(m).

During the protest process, Taxpayer provided his federal registration claiming the registration demonstrated that the aircraft was based in Ohio. Taxpayer's federal registration shows an Ohio residential address for the registered owner. Taxpayer did not provide an Ohio registration certificate which, for Ohio requirements, should have been filed with the Ohio Department of Aviation. While Taxpayer's federal registration is evidence that Taxpayer's aircraft was located in Ohio at some point in time, a lack of lease agreement with an Ohio hanger [*sic, hangar*] or any other documentation demonstrating the aircraft was based in Ohio, the Department cannot agree Taxpayer's aircraft was not hangered [*sic, hangared*] in Indiana for more than 60 days.

When asked to provide information showing that Taxpayer's aircraft was not hangered [*sic, hangared*] in Indiana for 60 days or more, Taxpayer only provided a signed statement. The document stated that "I [Taxpayer] can attest that [the aircraft] was based and registered in the state of Ohio. All paperwork was properly filled out with the Ohio Department of Aviation. In August of the year the base of [aircraft] was transferred to Michigan." At no point in Taxpayer's statement did he declare that the aircraft was not in Indiana for 60 days or more.

Given that the aircraft was hangered [*sic, hangared*] in Indiana, the rebuttable presumption is that the aircraft should have been registered in Indiana. Taxpayer failed to provide sufficient documentation that indicated he was not required to register his aircraft in Indiana. Furthermore, Taxpayer failed to provide sufficient documentation to show that his aircraft was not used, consumed, or stored in Indiana, therefore use tax is due on the purchase price of the aircraft. Taxpayer has not met the burden of proving the proposed assessment incorrect, as required by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

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